

EXHIBIT A

From: Jeffrey S. Abraham
Sent: Tuesday, February 14, 2023 10:46 AM
To: Antonelli, Marisa; Lee Squitieri; Michael Klein; Gerber, Jared
Cc: Thau, Clifford; Hoffman, David
Subject: RE: In re Bed Bath & Beyond Inc. Section 16(b) Litigation, No. 22 Civ. 9327

Dear Marisa,

As I understand matters, RC Ventures was planning on filing motions to dismiss the complaint filed by Plaintiff Augenbaum and, separately, the complaint filed by Plaintiff Cohen. The recent filing by Plaintiff Cohen should, therefore, not affect any arguments in favor of dismissal which RC Ventures planned to make with respect to Plaintiff Augenbaum's unamended complaint.

This is particularly true because the source of Plaintiff Cohen's right to amend her complaint is not apparent to Plaintiff Augenbaum. *See* Fed. R. Civ. P. 15 (allowing amendment 21 days after service of the complaint, 21 days after service of the motion to dismiss, with the opposing party's written consent, or with leave of the Court); Rule IV.A. of Judge Gardephe's Individual Rules of Practice (requiring a pre-motion conference before moving pursuant to Fed. R. Civ. P. 15); *Quiles v. City of New York*, 2003 WL 21961008, at *1 (S.D.N.Y. Aug. 13, 2003) (holding a purported second amended complaint was "a nullity because Plaintiff was never granted leave to file it"). No condition precedent to amending appears to be present here. At most, Lee's email at 5:11pm on February 13, 2023, suggests that Defendants implicitly consented to Plaintiff Cohen's amendment, but implicit consent does not appear to satisfy Fed. R. Civ. P. 15(a)(2). *See Fields v. Locke Lord Bissell & Liddell LLP*, 2008 WL 11336849, at *2 (N.D. Ga. June 12, 2008) (Hagy, M.J.) (rejecting amendment filed without defendant's written consent and rejecting plaintiff's argument that defendant "implicitly consented" by failing to object to amendment in preliminary planning report).

In addition to Plaintiff Cohen's recent complaint appearing to be a nullity, it is unclear what, if any, substantive changes Plaintiff Cohen's recent amended complaint made to her first filed complaint that were not already present in Plaintiff Augenbaum's complaint. Are Defendants able to identify any allegations in the purported amended complaint that would justify the extension requested? To that end, I am happy to send Defendants a redline of the changes if that would help.

This case was filed at the end of October 2022 with pre-trial letters discussing the relevant issues to be addressed on a motion to dismiss filed with the Court in November 2022. Plaintiff Cohen's actions should not be permitted to further delay the case filed by Plaintiff Augenbaum, and particularly should not be able to do so outside of the confines of the Federal Rules of Civil Procedure. Nonetheless, as one-time courtesy, Plaintiff Augenbaum agrees to the extension requested by Defendants if Defendants are willing to agree that any subsequent actions Plaintiff Cohen may take will not impact the schedule for separately briefing with respect to Plaintiff Augenbaum's claims.

Sincerely yours,
Jeff Abraham.

From: Antonelli, Marisa <mantonelli@velaw.com>
Sent: Monday, February 13, 2023 10:44 PM

To: Lee Squitieri <lee@sfclasslaw.com>; Jeffrey S. Abraham <JAbraham@aftlaw.com>; Michael Klein <mklein@aftlaw.com>; Gerber, Jared <jgerber@cgsh.com>

Cc: Thau, Clifford <cthau@velaw.com>; Hoffman, David <dhoffman@velaw.com>

Subject: RE: In re Bed Bath & Beyond Inc. Section 16(b) Litigation, No. 22 Civ. 9327

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All,

In addition to the new deadline of March 3 for a response to both Complaints, we propose March 24 for opposition papers, and March 31 for reply papers. This is intended to mirror the dates that Judge Gardephe set in his January 27 Order – just pushed back to account for the filing of the amended complaint.

Again, we would appreciate hearing your views on this as soon as possible so we can present the parties' positions in a letter to the court as early as possible tomorrow.

Thanks,

Marisa

From: Antonelli, Marisa

Sent: Monday, February 13, 2023 6:49 PM

To: 'Lee Squitieri' <lee@sfclasslaw.com>; Jeffrey S. Abraham <JAbraham@aftlaw.com>; Michael Klein <mklein@aftlaw.com>; Gerber, Jared <jgerber@cgsh.com>

Cc: Thau, Clifford <cthau@velaw.com>; Hoffman, David <dhoffman@velaw.com>

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Happy to discuss in the morning, but given that our motion to dismiss filing deadline is Wednesday we will need to file our request as early as possible tomorrow. I hope we can report consent from all parties, but in any case we would appreciate your prompt feedback.

From: Lee Squitieri <lee@sfclasslaw.com>

Sent: Monday, February 13, 2023 5:30 PM

To: Jeffrey S. Abraham <JAbraham@aftlaw.com>; Antonelli, Marisa <mantonelli@velaw.com>; Michael Klein <mklein@aftlaw.com>; Gerber, Jared <jgerber@cgsh.com>

Cc: Thau, Clifford <cthau@velaw.com>; Hoffman, David <dhoffman@velaw.com>

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[EXTERNAL]

Makes sense

From: Jeffrey S. Abraham <JAbraham@aftlaw.com>

Sent: Monday, February 13, 2023 5:29 PM

To: Antonelli, Marisa <mantonelli@velaw.com>; Michael Klein <mklein@aftlaw.com>; Lee Squitieri <lee@sfclasslaw.com>; Gerber, Jared <jgerber@cgsh.com>

Cc: Thau, Clifford <cthau@velaw.com>; Hoffman, David <dhoffman@velaw.com>

Subject: RE: In re Bed Bath & Beyond Inc. Section 16(b) Litigation, No. 22 Civ. 9327

Dear Marisa,

I see that Lee has written three emails in response to your message, the final one indicating that he intends to file an amended complaint tonight. Therefore, it would seem to take more sense if we discuss any scheduling issues tomorrow, hopefully in the morning.

Sincerely yours,
Jeff Abraham

From: Antonelli, Marisa <mantonelli@velaw.com>
Sent: Monday, February 13, 2023 5:06 PM
To: Jeffrey S. Abraham <JAbraham@aftlaw.com>; Michael Klein <mklein@aftlaw.com>; Lee Squitieri <lee@sfclasslaw.com>; Gerber, Jared <jgerber@cgsh.com>
Cc: Thau, Clifford <cthau@velaw.com>; Hoffman, David <dhoffman@velaw.com>
Subject: In re Bed Bath & Beyond Inc. Section 16(b) Litigation, No. 22 Civ. 9327

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Counsel:

Counsel for Judith Cohen has advised that they intend to file an amended complaint today. In light of this filing, we plan to request that the Court extend our deadline to respond to both the Cohen and the Augenbaum Complaints to March 3 so that we can file a single motion directed at both complaints in these consolidated cases. Could you please advise if you consent to this request?

Regards,

Marisa

Marisa F. Antonelli

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Thank You.
